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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|------------------------------------|------------------|
| 09/980,608 | 11/02/2001 | Wolfgang Behrens | BEHRENS 9 PCT | 8303 |
| 25889 7590 02/07/2007 WILLIAM COLLARD COLLARD & ROE, P.C. 1077 NORTHERN BOULEVARD ROSLYN, NY 11576 | | | EXAMINER HORTON, YVONNE MICHELE | |
| | | | ART UNIT 3635 | PAPER NUMBER |
| SHORTENED STATUTORY PERIOD OF RESPONSE | | MAIL DATE | DELIVERY MODE | |
| 3 MONTHS | | 02/07/2007 | PAPER | |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/980,608

Applicant(s)

BEHRENS, WOLFGANG

Examiner

Yvonne M. Horton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2, 16-25, 29 and 30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 30 is/are allowed.
- 6) ☒ Claim(s) 2, 16-25 and 29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 2, 16-25 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 19740682 A1 in view of US Patent #5,507,845 to MOLNAR et al. DE 19740682 A1 discloses a sheet of vegetation (10) including at least one underlay comprised of a first underlay (14), and a fillable structural matting (28) capable of being filled with a plant material (12) and arranged on the non-woven permeable underlay (14), such that the structural matting (28) projects over the underlay (14) and the underlay extends beneath the structural matting (28) to thereby overlap. DE 19740682 A1 discloses the basic claimed sheet except for explicitly detailing the use of holes formed in the underlay. MOLNAR et al. teaches that it is known in the art to form holes (45) in an underlay (42). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the structure of DE 19740682 A1 with the holes of MOLNAR et al. in order to facilitate the follow of excess water therethrough. In reference to claim 2, 16 and 17, MOLNAR et al. teaches an underlay weight of 100 g/m²; holes of 0.15 to 8mm; and hole selection as a function of surface area. Even so, it would have been obvious to one having ordinary skill in the

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art at the time the invention was made to select a known material and hole size and number suitable for the use intended as an obvious matter of design choice. For instance, if it is desired to saturate the mat, larger size and greater number of holes would be use; whereas, if less saturation is needed, a smaller number and size of holes would be used. Regarding claim 18, DE 19740682 A1 the structural matting (28) is looped. In reference to claims 21 and 22, DE 19740682 A1, as modified by MOLNAR et al., the underlay of MOLNAR et al. is a polyester/polypropylene non-woven material. Regarding claims 19,20,23 and 24, it too would have been obvious to one having ordinary skill in the art at the time the invention was made to select a known structural matting or underlay material suitable for the use intended as an obvious matter of design choice.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over DE 19740682 A1, as modified by US Patent #5,507,845 to MOLNAR et al. as applied to claim 29 above, and further in view of US Patent 4,941,282 to MILSTEIN. DE 19740682 A1, as modified by MOLNAR et al. discloses the basic claimed invention except for the use of reinforcing. MILSTEIN teaches that it is known in the art to provide a vegetation sheet with reinforcing (10). It would have been obvious to one having ordinary skill in the art to provide the sheet of DE 19740682 A1, as modified by MOLNAR et al., with the reinforcing of MILSTEIN in order to provide the planting medium with additional structure.

Allowable Subject Matter

Claim 30 is allowed.

Response to Arguments

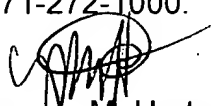
Applicant's arguments with respect to the claims have been considered but are moot in view of the newly revised ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (571) 272-6845. The examiner can normally be reached on 6:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on (571) 272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Yvonne M. Horton
Primary Examiner
Art Unit 3635

02/05/07